

Resented and Unforgiven

By Panu Minkkinen*

The creation of some thirty truth commissions during the last four decades in countries throughout Central and South America, Asia, Africa and Europe has quite understandably produced a wealth of legal literature focusing on the possibilities of reconciliation and transitional justice after periods of intense internal conflict and crimes of the direst kind.¹ Most of this literature rotates around a particular problem that is lucidly expressed in the introduction to the collection *Lethe's Law*:

[B]ecause of the increasing demand that the past be dealt with for the sake of a shared future, and due to the inability of conventional notions of justice to succeed in this context, law is being forced to incorporate a structural and symbolic element of forgiveness. This results in a new demand being placed on law, on an unprecedentedly grand scale, to be merciful rather than just in the conventional sense.²

I would agree but argue further that we are witnessing a change in scale rather than any radical shift in our understanding of law. The “new demand” identified by the authors mimics faithfully the logic of what we could call the critical dilemma of modern law. A central theme in practically all critically motivated thinking during the previous century has been the inability of modern law to deliver the objective of social justice that it expressly advocates. This central theme is evident in sociologically inspired attempts to substitute the formal rationality of law with the purposive rationality of the welfare state as well as in more metaphysical deliberations on the aporetic nature of “true” justice in relation to law. But the “new demand” also introduces a new problem as far as theoretical accounts of law are concerned, namely how to integrate forgiveness with law.

The current debates on reconciliation and transitional justice have further been fueled by Jacques Derrida’s ethical and political writings on forgiveness. Derrida’s oft-cited aporia “forgiveness forgives only the unforgivable” contrasts a conditional forgiveness re-

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¹ For information on truth commissions and a general bibliography, see Kevin Avruch and Beatriz Vejarano, *Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography*, 2 SOC. JUST.: ANTHROPOLOGY, PEACE, AND HUM. RTS. 47 (2001).

² Emiliios Christodoulidis & Scott Veitch, *Introduction* to p. ix-xv, *LETHE'S LAW: JUSTICE, LAW AND ETHICS IN RECONCILIATION*, at ix, x (Emiliios Christodoulidis & Scott Veitch eds., 2001).

quiring an economy of atonement with an unconditional one, a “gracious, infinite, an-economic forgiveness granted *to the guilty as guilty*, without counterpart, even to those who do not repent or ask forgiveness.”³ And even if true forgiveness must always go beyond a mere “therapy of reconciliation,” Derrida insists that the opposing poles of the conditional and unconditional must by necessity remain coupled:

[I]f one wants, and it is necessary, forgiveness to become effective, concrete, historic; if one wants it to *arrive*, to happen by changing things, it is necessary that this purity engage itself in a series of conditions of all kinds (psycho-sociological, political, etc.). It is between these two poles [of the unconditional and the conditional], *irreconcilable but indissociable*, that decisions and responsibilities are to be taken.⁴

Derrida, then, claims that a process such as a truth commission requires an unconditional or pure forgiveness. Without this unconditional forgiveness, a truth commission would be reduced to a mere therapeutic attempt to secure the continuity of the society in question. On the other hand, however, there is a built-in necessity for the graciousness of this pure and unconditional forgiveness to become effective, to take on practical forms and solutions that will enable forgiveness to “take place” conditionally. In addition, there seems to be a clear sequence: there must first be evidence of pure and unconditional forgiveness before any conditional form of forgiveness can be put to effect.

But Derrida also associates the link between unconditional forgiveness and its conditional and practical manifestations to a will: “If one wants.” Whose will are we talking about? Since it is only the victim that can unconditionally forgive — and, if we are to believe Derrida, it is unconditional forgiveness that we must begin with here — we must presume that it is also only the victim that can initiate, himself or through his representatives, any conditional manifestations for forgiving by being first willing to forgive unconditionally. Without the victim’s unconditional willingness to forgive, all truth commissions would be merely externally imposed reconciliatory therapy. They may speak the language of forgiveness, but without the victim’s unconditional forgiveness they would be reduced to practical attempts at pardon and amnesty.

But what about the unwilling? How do we understand a victim who, without seeking reparation or apology, is not prepared to either forgive or to even engage in any process recognizing the possibility or necessity of forgiveness? How can we reconcile forgiveness and persistent resentment? By focusing on the position of the resentful and unforgiving victim, I wish to highlight the ethical contrasts and problems that are involved in the

³ JACQUES DERRIDA, ON COSMOPOLITANISM AND FORGIVENESS 32 (Mark Dooley & Michael Hughes trans., Routledge 2001) (1999). Derrida’s thoughts on forgiveness are a reply to VLADIMIR JANKÉLÉVITCH, FORGIVENESS (Andrew Kelley trans., University of Chicago Press 2005) (1967).

⁴ DERRIDA, *supra* note 4, at 44-45.

theoretical understanding of the work of truth commissions and to re-evaluate the challenge of the “new demand” for law that the editors of *Lethe’s Law* had identified.⁵

The two thinkers commonly associated with resentment are, of course, Friedrich Nietzsche⁶ and Max Scheler.⁷ Both regard the “man of resentment” as someone who is unable to take revenge, someone wanting to act out or to materialize a feeling of resentment through either a gracious gesture of forgiveness or a psychologically purging retaliation but finding it impossible to do so because of an innate weakness.

A strikingly different take on resentment is offered by the Belgian-German author Jean Améry.⁸ Born Hans Maier in Vienna in 1912 to a Jewish-Christian family, Améry was an aspiring albeit unsuccessful writer. In 1938, he fled the Nazis first to France and later to Belgium, where he was arrested for his involvement in the resistance movement in 1943. Having spent two years in various concentration camps, he returned to Belgium to write articles for various German-language newspapers and periodicals. In 1966, he finally entered into the consciousness of the German literary scene with the publication of *At the Mind’s Limits*. This short book, with its obvious allusion to Nietzsche (the original title was *Jenseits von Schuld und Sühne*, “Beyond Guilt and Atonement”), is a collection of five essays, each exploring the highly personalized experience of a Holocaust survivor.⁹

One of the book’s essays, “Resentments,” is an introspective analysis of the feelings of resentment that the victim of the Shoah persistently feels against his oppressors. Améry recognizes that what eventually sets him apart from both his fellow victims “now gushing over about reconciliation” and his enemies “converted to tolerance” is his inability and unwillingness to appease his resentment. This, however, obliges the resentful victim to clarify his feelings to those against whom they are directed. A key to understanding Améry’s account of the “essence of victim-existence” is time:

[R]esentment is not only an unnatural but also a logically inconsistent condition. It nails every one of us onto the cross of his ruined past. Absurdly, it demands that

⁵ On the problem of the resentful and unforgiving victim in truth commissions, see also Special Issue, *The Importance of Negative Emotions in Post-Conflict Societies*, 5 J. HUM. RTS. 1 (2006).

⁶ See FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALITY* 11-37 (Carol Diethe trans., Cambridge University Press 1994) (1887).

⁷ See generally MAX SCHELER, *RESENTIMENT* (William W. Holdheim trans., Free Press 1961) (1912).

⁸ There is very little secondary literature on Améry available in English aside from the brief introductions to the English translations of his works. A recent biography in German is IRENE HEIDELBERGER-LEONARD, *JEAN AMÉRY: REVOLTE IN DER RESIGNATION: EINE BIOGRAPHIE* (Klett-Cotta 2004).

⁹ On Améry and truth commissions, see Thomas Brudholm, *The Justice of Truth and Reconciliation*, 18 HYPATIA 189, 189-96 (2003); THOMAS BRUDHOLM, *RESENTMENT’S VIRTUE: JEAN AMÉRY AND THE MORALITY OF UNFORGIVING AND UNRECONCILED VICTIMS* (forthcoming 2007) (Ph.D. dissertation, The Danish University of Education, May 4, 2005) (on file with author).

the irreversible be turned around, that the event be undone. Resentment blocks the exit into the genuine human dimension, the future.¹⁰

One does not resent only the crimes committed. The apparent ease with which both the victim's persecutors and the "lofty ethical flights" of mediating third parties manage to turn to an allegedly common future becomes a major catalyst in Améry's resentment:

It is impossible for me to accept a parallelism that would have my path run beside that of the fellows who flogged me with a horsewhip. I do not want to become the accomplice of my torturers; rather, I demand that the latter negate themselves and in the negation coordinate with me.¹¹

Améry clearly sees any formalized attempt to uncover the 'truth' of the crimes committed as a moral insult. In order to make it possible for an offender to assume responsibility for his actions, a process such as a truth commission will try to objectify history into a verifiable narrative of causes and effects which, Améry claims, contradicts the victim's inalienable right to resent. And in this respect he considers his torturers and those who initiate such processes as co-conspirators:

When I stand by my resentments, when I admit that in deliberating our problem I am "biased," I still know that I am the captive of the *moral truth* of the conflict. . . . The atrocity as atrocity has no objective character. Mass murder, torture, injury of every kind are objectively nothing but chains of physical events, describable in the formalized language of the natural sciences. . . . Only I possessed, and still possess, the moral truth of the blows that even today roar in my skull, and for that reason I am more entitled to judge, not only more than the culprit but also more than society — which thinks only about its continued existence.¹²

Therefore, any formalized process of forgiveness that is oriented towards the future is immoral, and forgiving in such circumstances implies a shameful subjection to what Améry calls the "natural time" of healing. Precisely because such a conception of healing with time is "natural," Améry insists that it is not only immoral but radically alien to morality. As a moral being, man has both the right and the privilege to contradict any natural occurrence, and this includes the healing that time allegedly brings about. Healing, then, is not a natural phenomenon into which a given process — a truth commission or other — can escort the victim. It is a radical choice through which the victim denies his moral existence by subjecting himself to the natural order of time.

¹⁰ JEAN AMÉRY, *AT THE MIND'S LIMITS: CONTEMPLATIONS BY A SURVIVOR ON AUSCHWITZ AND ITS REALITIES* 68 (Sidney Rosenfeld & Stella P. Rosenfeld trans., Granta Books 1980).

¹¹ *Id.* at 69.

¹² *Id.* at 69-70.

In his resentment, Améry recognizes two functional aspects. On the one hand, resentment represents the victim's subjective efforts to purge himself, to turn back time in order to undo the suffering that he has endured. Améry duly admits to the "absurdity" of this claim but argues that it is the victim's right because morality is by necessity dissociated from the dictates of "natural time." But it also has a more objective and historical task, no less absurd or moral than the victim's demand that the irreversible be reversed: resentment invokes the German revolution that never took place. Face to face with such moral and yet absurd demands, Améry can see but one solution:

[T]he problem could be settled by permitting resentment to remain alive in one camp and, aroused by it, self-mistrust in the other. Goaded only by the spurs of our resentment — and not in the least by a conciliatoriness that, subjectively, is almost always dubious and, objectively, hostile to history — the German people would remain sensitive to the fact that they cannot allow a part of their national history to be neutralized by time, but must integrate it. . . . [I]t would no longer repress or hush up the twelve years that for us others really were a thousand, but claim them as its realized negation of the world and its self, as its own negative possession.¹³

There is, however, no objective truth to claim, no common history to recognize, but only the subjective moral truth of a victim who will persistently refuse to forgive. When the victim refuses to forgive, the unconditional forgiveness that Derrida asserts as the precondition of genuine forgiveness becomes impossible. And with every attempt at a practical social arrangement for reconciliation contradicting the moral right of the victim to resent, the possibilities of transitional justice would seem to be very limited.

The humanistically inclined legal theorist accounting for the work of the truth commissions will duly acknowledge the victim's right not to forgive and to continue resenting the offender. He will, however, have to do so within an already existing process of reconciliation, i.e. through the conditional necessities of forgiveness. This process can be either factually existing or merely an ideational framework within which the possibilities of reconciliation are assessed. The double gesture of acknowledging the victim's right to resent and concurrently sustaining a process that could never have respected such a contradicting right in the first place can only be performed from a position that identifies the theorist with the victim, by partaking in his suffering through an economy of compassion and extending the duration of the process in the victim's name. But such a compassionate position can only be an imposition, an intervention by a third party that, if we agree with Derrida on the necessary requirement of an unconditional forgiveness preceding any conditional framework, corrupts the process into 'social therapy' by disregarding the victim's right to resent.

If forgiveness is to play any part in a theory of transitional justice, the theorist must adopt a more integral position in the conflict. If a compassionate identification with the

¹³ *Id.* at 77-8.

resentful victim is not possible, there seems to be only one place to go. I am the offender; I am the object of the victim's resentments regardless of whether I am the actual perpetrator or have contributed to his suffering through my clumsy attempts at unsolicited understanding and alleviation. Face to face with an impenetrable suffering and an irreconcilable resentment, theory finds itself in a situation where it can neither ask for forgiveness — I am not requested to do so by the resentful victim or permitted to absolve myself unilaterally — nor thematize forgiveness into effectual social practices that would by necessity undermine its offences. As offender, the only thing left to do is for theory to accept the irreconcilable and the impasse that follows.

There are two ways to read this impasse.

A cynical reading will retract and find solace in the liberalist tradition of modern law that, whatever its other shortcomings may be, can at least formalize the encounter between victim and factual offender into workable solutions. Where no forgiveness is available, modern law will settle for restitution and amnesty. This is why truth commissions are procedurally and administratively so easily juridicized. And even if they operate at the fringes of law, there is nothing radically new about the way they function. It is still a more or less formal encounter between an offender and a victim before a seemingly neutral third party that endorses the objectified outcome through its authority.

But I believe that there is a more radical way of understanding the impasse.

My resentful victim is the absolutely other.¹⁴ Face to face with an unforgiving other, I take responsibility for a suffering that is both impenetrable and incomprehensible. I acknowledge the necessity to avoid any gesture of comprehension or compassion that would reduce my victim into my likeness within a shared and totalizing humanity.

In order to avoid reducing transitional justice into mere 'social therapy,' theory can address the unconditionality of forgiveness by negating itself or, as Améry suggests in relation to the German people, by claiming the atrocities as its own negative possession. By unconditionally accepting the victim's right to resent and by recognizing his suffering as its own doing, theory can begin to work out the ethical preconditions of a transitional justice that would enable forgiveness to take place. This is an ethics that precedes the law, an "interhuman perspective"¹⁵ where responsibility for the other is assumed before the reciprocity of legal relations. Within this pre-legal ethics, the encounter between theory and its resentful victim is the aporia of forgiveness that Derrida identifies, and it is within this aporia that theory, resented and unforgiven, assumes its responsibility.

¹⁴ On the "absolutely other," see EMMANUEL LEVINAS, *TOTALITY AND INFINITY: AN ESSAY ON EXTERIORITY* 194-97 (Alphonso Lingis trans., Duquesne University Press 1969) (1961); MAURICE BLANCHOT, *THE INFINITE CONVERSATION* 202-17 (Susan Hanson trans., University of Minnesota Press 1993) (1969).

¹⁵ On suffering and the interhuman perspective, see EMMANUEL LEVINAS, *ENTRE NOUS: ON THINKING-OF-THE-OTHER* 91-101 (Michael B. Smith and Barbara Harshav trans., Athlone Press 1998) (1991).